



AFFIRMATIVE EMPLOYMENT PROGRAM (AEP)






HISTORICAL PERSPECTIVE

For much of the last century, minorities and women confronted legal and social exclusion

Beginning in the 1940s, a series of Executive Orders and statutes were adopted to address a long history of employment discrimination in the federal government

Although progress was made after those actions, it was insufficient; Congress, in 1972, determined that discrimination against federal employees continued and that it was necessary to provide federal employees needed protection

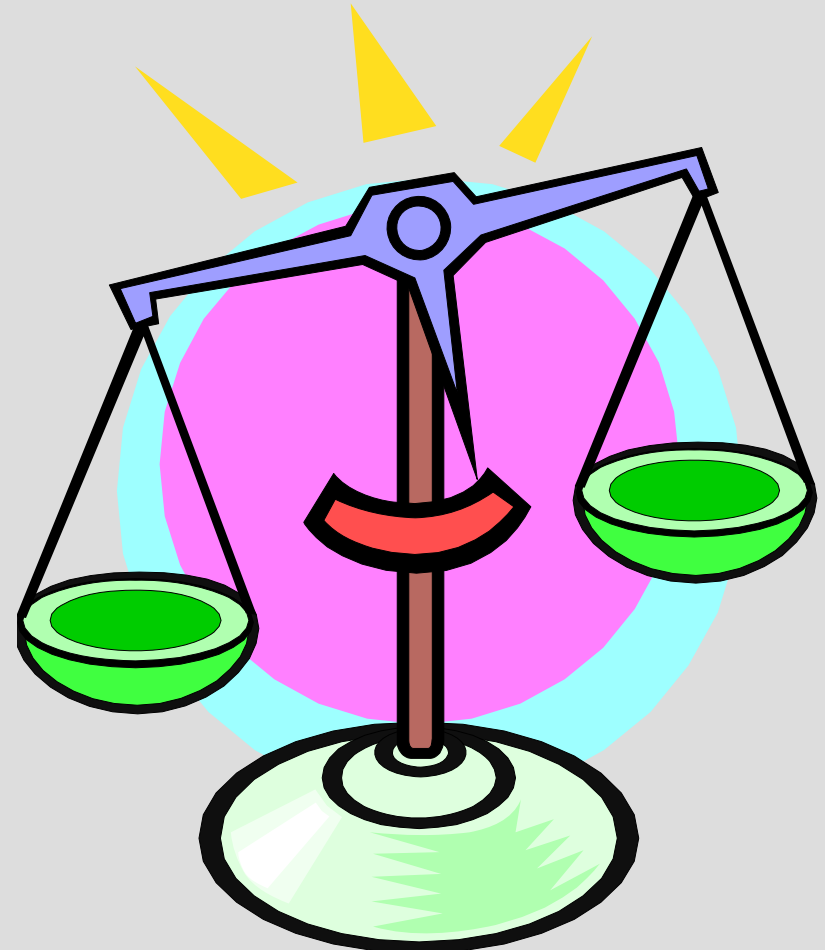


**EEOC is mandated to enforce laws
ensuring EEO for all**

**Goal of laws - ensure that all
Americans are judged on
their ability to do the job and not on
personal characteristics**

**14th Amendment to the
Constitution promised that all
Americans have a right to equal
protection under the law**

**Through Title 29, CFR Part 1614,
Congress acknowledged that, for
certain Americans, historic
discrimination had created barriers
of the promise of EEO**





Extent of permissible affirmative action is strictly limited under the law. Only lawful when:

Designed to respond to demonstrated imbalance in the workforce

Is flexible

Time-limited

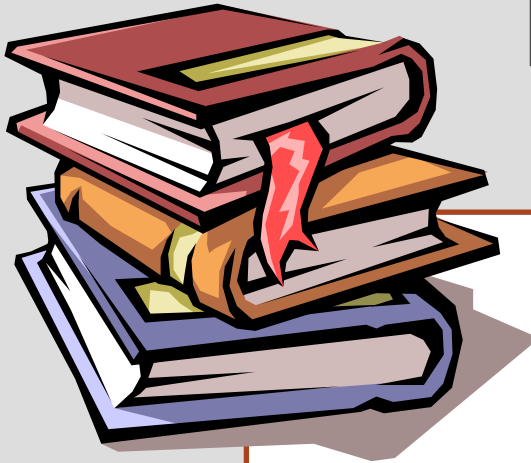
Applied only to qualified individuals

Respects rights of non-minorities

Not a quota system



RELEVANT CASE LAW



Adarand v. Pena

Bragdon v. Yeutter

Hazelwood School District v. United States

Johnson v. Transportation Agency






Adarand v. Pena - An Overview

The Supreme Court held the use of race based affirmative action measures by the federal government requires strict scrutiny and not a constitutional bar; two elements of strict scrutiny include compelling governmental interests and narrow tailoring

Agencies may voluntarily use race in employment actions if there is a 'gross statistical disparity'

Ensure use of numerical goals are not converted into rigid requirements (quotas). Goals establish only a numerical objective to be attained through an agency's best efforts; quotas require selection of a specific number of minorities without regard to qualification, availability, or application rates





Bragdon v. Yeutter - An Overview


Involved relying on an affirmative action plan as justification for the intentional utilization of race and sex as selection factors

Determined three components of an AEP that make it valid:

Purpose of the plan must be to break down old patterns of segregation and open up employment opportunities for protected groups

Plan must not create an absolute bar to the advancement of non - minority employees, or otherwise trammel the interests of those employees

Plan must be temporary in the sense that it is designed to attain, not to maintain, a balance among affected classes






Hazelwood v. United States - An Overview

Key issue involved determining what figures would provide the most accurate basis for comparison to the hiring figures

Court held proper comparison was between the racial composition of the employer's staff and the qualified public school teacher population in the relevant labor market


It was an error to measure it against the percentage of Blacks in the school population






Johnson v. Transportation Agency


Decision to hire was made pursuant to an Agency plan that directed that sex or race be taken into account for the purpose of remedying underrepresentation



Plan set aside no specific number of positions for minorities or women, but required short range goals be established and adjusted annually



Court held that the Agency appropriately took into account appellant's sex as one factor in making hiring decision because the plan represented a moderate, flexible, individualized approach to affecting a gradual improvement in the representation of minorities and women in the workforce





REGULATORY GUIDANCE

Section 717, Title VII of the Civil Rights Act of 1964

EEOC Management Directive 715, 1 Oct 03

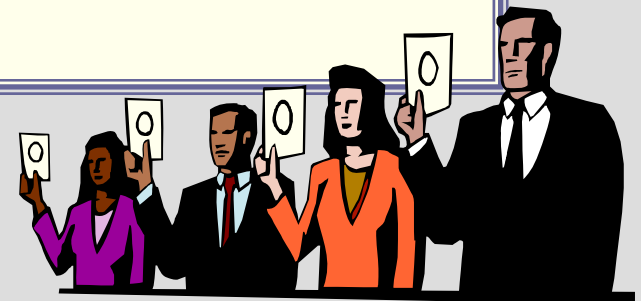
Section 501 of the Rehabilitation Act of 1973

AEP IS OPPORTUNITY - NOT MANDATORY SELECTION

Affirmative employment is about efforts to make possible equitable representation in the organization at all grade levels and not preferential hiring

Based on goals and are not guaranteed

Provides opportunity to look at policies, practices, and procedures to ensure fairness and not just policies for selected individuals



MAKING A DIFFERENCE



Commitment from top management

EEO officers need access and credibility

Recommendations of EEO must be taken seriously

EEO is kept in the loop

Affirmative Employment = Plan
How are we going to achieve diversity?

THE AEP SUCCESS FORMULA

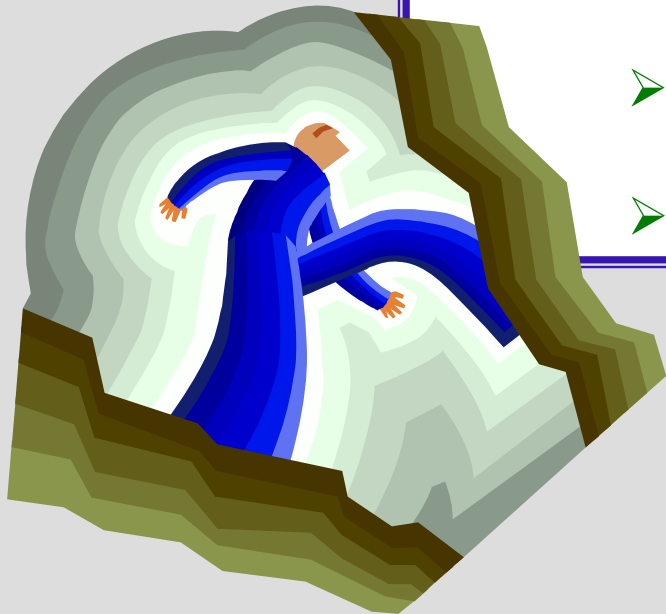


- **Market**
- **Educate**
- **Train**
- **Evaluate**
- **Reward**
- **Network**



BARRIERS

- Organizational Placement of EEO
- Lack of Support from Leadership
- Complaint Focused Program
 - Inadequate Resources
 - Lack of Accountability



Elements of an AEP Program

Workforce

**Discrimination
Complaints**

**Recruitment and
Hiring**



**Employee
Development
Programs**

Promotions

Separations

**Program
Evaluations**

OUR JOB

Efficient and effective use of automated tools

Include all employees in analysis, to include disabled

Ensure performance indicators are measurable

Conduct impact analysis during downsizing



Not about quotas

Concerns access

Addresses inclusion

Equal Opportunity

Tapping into diverse
applicant sources

Reaching Out

Program Ownership

Promoting Diversity



Is about people

Developing people

Competent, qualified
applicants

Organizational Values

Retaining People

Compensating People

Fair Appraisals

Involving Others

MAKE A DIFFERENCE !

**PLANT THE SEED
AND ALLOW FOR
CONTINUED
ORGANIZATIONAL
GROWTH**

